

*** THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN**

+ WRIT PETITION No. 20487 OF 1998

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% 05.06.2007

Ch.Nagaraju

..... Petitioner

Vs.

**\$ The Board of Directors,
Dredging Corporation of India,
Visakhapatnam and 2 others**

....Respondents.

! Counsel for the Petitioner: Sri M.P.Chandramouli

**^ Counsel for the Respondent: Sri D.V.Sitaramamurthy, Learned
Standing Counsel**

< Gist:

>Head Note

? Citations:

[1] 1964 (5) SCR 64

2 (2004) 3 SCC 682

3 (2006)5 SCC 173

4 (1964) 4 SCR 718

5 (1963 (1) LLJ 684

6 (1963) 3 SCR 767

7 (1965) 1 WLR 1320 at 1326

8 2006 TIGJ- 207 (Gujarat High Court)

9 1998(4) ALD 722

10 2003(3) SCC 583

¹¹AIR 1963 SC 779

¹²AIR 1969 SC 966

¹³AIR 1996 SC 1561

¹⁴1996(3) ALD 719 (DB)

¹⁵2001(2) SCC 386

¹⁶2001(9) SCC 592

¹⁷2005(6) SCC 321

¹⁸1999(1) SCC 759

¹⁹2003(3) SCC 605

²⁰(2005) 10 SCC 84

²¹2006(3) SCC 690

²²2006(8) SCC 108

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No. 20487 OF 1998

ORDER:

The order of the Chairman and Managing Director, Dredging Corporation of India Limited dated 04.10.1996, whereby the petitioner was imposed the penalty of removal from service, as confirmed in appeal, by the Board of Directors of Dredging Corporation of India Limited, in its order dated 13.06.1997, is under challenge in this writ petition on the ground that the findings of the enquiry officer, (which was accepted both by the disciplinary and appellate authority), are perverse, based on no evidence and that the punishment imposed is arbitrary, discriminatory and in violation of Articles 14 and 16 of the Constitution of India.

The jurisdiction, to issue a writ of certiorari and quash the order of punishment imposed on a delinquent employee, is supervisory and the Court exercising it does not act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal, as a result of appreciation of evidence, cannot be reopened or questioned in writ

proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, it must always be borne in mind that a finding of fact recorded by the Tribunal cannot be challenged in certiorari proceedings on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point, and the inference of fact to be drawn from the said finding, are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a Writ Court. It is within these limits that the jurisdiction conferred under Article 226 to issue a writ of certiorari can be legitimately exercised. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. To be amenable to correction in certiorari jurisdiction, the error committed by the court or authority on whose judgment the High Court was exercising jurisdiction, should be an error which is self-evident. If it is reasonably

possible to form two opinions on the same material, the finding arrived at one way or the other, cannot be called a patent error.

(**Syed Yakoob Vs. K.S. Radhakrishnan**^[1], **Ranjeet Singh Vs. Ravi Prakash**^[2]). As to what would constitute an error of law, the Supreme Court, in **Municipal Council, Sujanpur Vs. Surinder Kumar**^[3], observed:-

“.....The High Court’s jurisdiction to issue a writ of certiorari though is limited, a writ of certiorari can be issued if there is an error of law apparent on the face of the record. What would constitute an error of law is well known. In *Judicial Review of Administrative Action*, IVth Edn., pp. 136-37, S.A. de Smith has summed up the position:

“The concept of error of law includes the giving of reasons that are bad in law or (if there is a duty to give reasons) inconsistent, unintelligible or, it would seem, substantially inadequate. It includes also the application of a wrong legal test to the facts found, taking irrelevant considerations into account and failing to take relevant considerations into account, exercising a discretion on the basis of any other incorrect legal principles, misdirection as to the burden of proof, and wrongful admission or exclusion of evidence, as well as arriving at a conclusion without any supporting evidence.....”

It is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not the impugned error is an error of law, and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case. (**Syed Yakoob**¹).

While Courts in judicial review will not normally interfere with assessment of fact in certain situations, however, they may do so: first, where the existence of a set of facts is a condition precedent to the exercise of a power and second, when the

decision-maker has taken into account as a fact something which is wrong or where he has misunderstood the facts upon which the decision depends or where the evidence, taken as a whole, is not reasonably capable of supporting a finding of fact. Again, these decisions are best described as strictly “irrational”. (**Judicial Review of Administrative Action: de smith, woolf & Jowell–Fifth Edition**).

The High Court, under Article 226 of the Constitution, has jurisdiction to enquire whether the conclusion of the disciplinary/appellate authority, on which the impugned order of punishment rests, is not supported by any evidence at all. The proceedings held against the delinquent employee under the rules to determine whether he is guilty of the charges framed against him are in the nature of quasi-judicial proceedings and a writ of certiorari can be claimed by the delinquent employee if he is able to satisfy the High Court that the ultimate conclusion of the disciplinary/appellate authority in the said proceedings, which is the basis of the punishment imposed on him, is based on no evidence. (**Union of India Vs. H.C. Goel**^[4]). If a finding of fact is made by the impugned order and it is shown that it is based on no evidence, that would be a point of law open to be urged under Article 226. (**W.M. Agnani Vs. Badri Das**^[5]).

The High Court would be justified in quashing the impugned order if it is satisfied that the said order is not based on any evidence at all. An order passed by a Tribunal, holding a quasi-judicial enquiry, which is not supported by any evidence is an

order which is erroneous on the face of it and, as such, is liable to be quashed by the High Court in exercise of its high prerogative jurisdiction to issue a writ under Article 226. But the conclusion that the impugned order is not supported by any evidence must be reached after considering the question as to whether probabilities and circumstantial evidence do not justify the said conclusion. **(Board of High School & Intermediate Education Vs. Bagleshwar Prasad^[6])**.

‘No evidence’ does not mean total dearth of evidence. It extends to any case where the evidence, taken as a whole, is not reasonably capable of supporting the finding, or where, no tribunal could reasonably reach that conclusion on that evidence. This ‘no evidence’ principle has something in common with the principle that perverse or unreasonable action is unauthorized and ultravires. It also has some affinity with the substantial evidence rule which requires that findings be supported by substantial evidence on the record as a whole. Lord Denning MR, in **Ashbridge Investments Ltd Vs. Minister of Housing and Local Government^[7]**, put ‘no evidence’ at the head of the list of vitiating errors, saying:-

“.....The court can interfere with the Minister’s decision if he has acted on no evidence; or if he has come to a decision to which on the evidence he could not reasonably come; or if he has given a wrong interpretation to the words of the statute; or if he has taken into consideration matters which he ought not to have taken into account, or vice versa; or has otherwise gone wrong in law. It is identical with the position when the court has power to interfere with the decision of a lower tribunal which has erred in point of law.....”

(Administrative Law: H.W.R. Wade & C.F. Forsyth Ninth

Education)

It is within this limited area that the facts of the present case and the contentions raised, both for and against the impugned order, are required to be examined.

The petitioner joined the service of the Dredging Corporation of India Limited, as a Junior Officer (Survey) on 03.06.1977, and gradually rose up to the rank of Manager. The petitioner claims to have rendered 18 years of unblemished loyal and sincere service. The Dredging Corporation of India Limited was awarded the contract of dredging and removal of soil underneath the seventh Cargo Berth at Kandla Port and in turn sub-contracted the work to M/s. Jaisu Shipping Co. Pvt. Ltd. The petitioner, who was posted at Kandla in the year 1990 as the Project Manager, was issued a charge memo dated 17.09.1994 wherein eight charges were levelled against him. They are:-

ARTICLE –I:

While functioning as Head of the DCI Project Office at Kandla, during June, 92, Shri Ch. Nagaraju, Manager (P), B.NO. 0139 approved excess payment for about 308 Cu.Mtrs., amounting to Rs.44,352/- to M/s. Jaisu ShippingCo. (Pvt.) Ltd., against their bill No. JS/DCI/VII/D.3, dated 08.06.1992 for execution of work under the 7th Cargo Berth by them, and failed to take suitable action to recover the Corporation's money, promptly.

By the aforesaid act, the said Sri Nagaraju, Manager (P) displayed negligence in the performance of his official duties and acted in a manner prejudicial to the interests of the Corpn., and thus violated the provisions of Sub-rules (5) and (9) of Rule 5 of the Conduct, Discipline &Appeal Rules of the Corporation.

ARTICLE II:

While functioning in the aforesaid capacity, the said Sri Nagaraju approved payment of Rs.20,28,422.90 for a quantity of 14,086.27 cu.mtrs. to M/s. Jaisu Shipping Co., against their Bill No. JS/DCI/VII/D-3 dt: 08.06.1992, wherein the actual quantity dredged was inflated by the Contractor. By approving the said payment, Sri Nagaraju showed undue favour to the

Contractor.

By the aforesaid act, the said Sri Nagaraju failed to maintain absolute integrity, displayed lack of devotion to duty and negligence in the performance of his duties and thereby violated the provisions of Sub-rule 1(i) & (ii) of Rule 4 and Sub-rule 9 of Rule 5 of the Conduct, Discipline & Appeal Rules of the Corporation.

ARTICLE III:

While functioning in the aforesaid capacity, and as Engineering-in-Chief of the contract, the said Sri Nagaraju, by approving and releasing payment against the Bills of M/s. Jaisu Shipping Co. (Pvt.) Ltd., for dredging underneath 7th Cargo Berth of Kandla Port Trust, without deducting the quantities towards the volume of pillars and muffs/tie-beams underneath the berth from the measured quantity, as required by the contractual conditions, acted negligently and showed undue favour to the Contractor.

By the aforesaid act, the said Sri Nagaraju, Manager (P), displayed lack of devotion to duty and negligence in the performance of his duties, acted in a manner prejudicial to the interests of the Corpn., and thereby violated the provisions of Sub-rule 1 (ii) of Rule 4 and Sub-rules 5 and 9 of Rule 5 of the Conduct, Discipline & Appeal Rules of the Corporation.

ARTICLE IV:

While functioning in the aforesaid capacity, as the Head of the Project Office, Kandla, the said Sri Nagaraju, Manager (P), kept the Work Boat idle, even when it was in working condition, instead of putting the same to gainful use as a routine boat, on regular basis, for the Dredgers and also failed to procure/cause to procure the sea water pump required for Workboat –I promptly, due to which the Work Boat was non-operational from 22.6.92 to 30.7.92.

By the aforesaid acts, the said Sri Nagaraju, displayed lack of devotion to duty and negligence in the performance of the official duties and acted in a manner prejudicial to the interests of the Corpn., and thus violated the provisions of Sub-rule 1 (ii) of Rule 4 and Sub-rules 5 and 9 of Rule 5 of the Conduct, Discipline & Appeal Rules of the Corporation.

ARTICLE V:

While functioning in the aforesaid capacity, the said Sri Nagaraju, approved excess payment of Rs.6,400/- to M/s. Pritam Brothers, the Boat Contractors, vide PV No. 63, dated 22.4.92, and thereby caused financial loss to the Corpn.

By the aforesaid act, the said Sri Nagaraju displayed negligence in the performance of his official duties and acted in a manner prejudicial to the interests of the Corpn., and thereby violated the provisions of Sub-rules 5

and 9 of Rule 5 of the Conduct, Discipline & Appeal Rules of the Corpn.

ARTICLE VI:

While Shri Nagaraju was functioning in the aforesaid capacity and when certain materials of DR-6 were required to be transported to Project Office, Bombay, during December, 1991, for the immediate use of Mandovi-II, he arranged dispatch of the same in violation of the prescribed procedure, whereby the consignment, whose cost was about Rs.1 lakh, was lost and he also failed to take follow-up action for restoration of the Corporation's property on his own, for about 10 months after the loss of the property ;and till he was directed to do so by the Head Office.

By the aforesaid acts, the said Sri Nagaraju displayed lack of devotion to duty and negligence in the performance of his official duties and acted in a manner prejudicial to the interests of the Corpn., and thus violated the provisions of Sub-rule 1 (ii) of Rule 4 and Sub-rules 5 and 9 of Rule 5 of the Conduct, Discipline & Appeal Rules of the Corpn.

ARTICLE VII:

While functioning as Head of the DCI Project Office at Paradip, during June, 93, Sri Ch. Nagaraju, Manager (Projects), awarded the contract for supply of a diesel-driven car to one Sri Nabaghan Rout, who was not the lowest party and in deviation of the contractual conditions, and showed undue favour to the contractor.

By the aforesaid act, the said Sri Nagaraju displayed lack of devotion to duty and negligence in the performance of his official duties, acted in a manner prejudicial to the interests of the Corpn., and thereby violated the provisions of Sub-rule 1 (ii) of Rule 4 and Sub-rules 5 and 9 of Rule 5 of the Conduct, Discipline & Appeal Rules of the Corpn.

ARTICLE VIII:

While under suspension from 5.7.93, Sri Ch. Nagaraju left his Headquarters, i.e., Paradip, and visited Cuttack and Bhubaneswar on 7.7.93 and 9.7.93 respectively, un-authorisedly and in violation of the instructions of the CMD as stipulated in the suspension order and also unauthorisedly used the Taxi engaged by the Project Office, for traveling from Paradip to Cuttack and back on 7.7.93.

By the aforesaid acts, Sri Nagaraju violated the orders of the CMD, committed an act subversive of discipline and good behaviour and also unauthorisedly used the Corporation's vehicle at Corporation's expenses, and, thereby, violated the provisions of Sub-rules 6, 20 and 37 of Rule 5 of the Conduct, Discipline & Appeal Rules of the Corpn.

The petitioner submitted his explanation denying the charges. Not being satisfied with the petitioner's explanation, a departmental enquiry was ordered, an enquiry officer appointed and, on completion of the enquiry, the enquiry officer submitted his report on 25.01.1996. The petitioner was called upon, vide letter dated 01.02.1996, to submit his representation to the findings in the enquiry report and, pursuant to the representation submitted by the petitioner on 23.02.1996, the second respondent passed an order on 04.10.1996 imposing on him the punishment of removal from service. Aggrieved thereby the petitioner preferred an appeal to the first respondent on 14.10.1996 under Rule 34 of the Conduct, Discipline and Appeal Rules and the said Appeal was dismissed by order dated 13.06.1997.

Sri M.P. Chandramouli, learned Counsel for the petitioner, would seek to have the order of punishment of removal from service quashed mainly on the ground that the charges held established in the enquiry, and the findings of the enquiry officer in this regard, are based on no evidence. Learned Counsel would contend that the disciplinary authority mechanically, and without application of mind, had approved the findings of the enquiry officer though these findings were based merely on surmises and conjectures and, while the petitioner had raised several contentions in appeal, the appellate authority had failed to consider them and had, without proper application of mind, mechanically rejected the appeal preferred by the petitioner. Learned Counsel would contend that even if this Court were to come to the conclusion that some of, and not all, the charges leveled against

the petitioner were established, since the charges do not relate to misappropriation of company's properties and, at best, amount to lack of proper supervision on his part and negligence in the discharge of duties on the part of his subordinates, the punishment of removal from service is grossly disproportionate. Learned Counsel would point out that the petitioner has crossed the age of superannuation and, even if this Court were to set aside the punishment, the only benefit which can be extended to the petitioner is payment of back wages as compensation. Learned Counsel would contend that, since the matter has been pending on the file of this Court, for the past more than a decade, no useful purpose would now be served in remanding the matter back either to the appellate authority or to the disciplinary authority and, with a view to give a quietus to the entire dispute, this Court should, itself, substitute the punishment imposed by the disciplinary authority with a lesser punishment. Learned Counsel would rely on **Cholpadi Jagannath Kamath Vs. P.S.V. Malliya**^[8].

Sri D.V. Sitaramamurthy, learned Standing Counsel for the respondent corporation, on the other hand, would submit that the evidence on record is sufficient to hold the charges levelled against the petitioner to be established. Learned Counsel would submit that this Court, in proceedings under Article 226 of the Constitution of India, would neither sit in appeal over the findings recorded in a domestic enquiry nor would it re-appreciate the evidence on record or substitute its views for that of the enquiry officer. Learned Counsel would contend that, even if two equally plausible views could be arrived at on the evidence adduced in the

enquiry, this Court would exercise restraint as otherwise it would amount to this Court sitting in judgment over the findings of the enquiry officer. Learned Counsel would contend that the charges held established in the departmental enquiry are grave and serious in nature and that, for the charges held proved, the punishment of removal from service was justified. Learned Counsel would submit that, since the nature and extent of punishment to be imposed were in the employer's realm it was not for this Court to substitute the punishment imposed by the second respondent with another. Learned Counsel would contend that, since the charges held established include showing undue favour to the contractor and failure to maintain absolute integrity, the punishment imposed can neither be said to be grossly disproportionate nor is it one which shocks the conscience of this Court and, therefore, no interference was called for. Learned Counsel would contend that, even in cases where the punishment is found to be shockingly disproportionate, it was not for this Court to substitute the punishment imposed by the employer with another. He would rely on **K.S.S.N. Sarma Vs. State Bank of India**^[9] and **Lalit Popli Vs. Canara Bank**^[10].

Since the contentions urged on behalf of the petitioner, to have the order of punishment quashed, is mainly that the charges held established are based on surmises and conjectures, no evidence and that the findings are perverse, it is necessary to examine, to this limited extent, the evidence on record. As noted above "no evidence" does not mean total dearth of evidence. It only means that the evidence on record is such on the basis of

which no reasonable man would come to the conclusion that the charges levelled against the delinquent employee are established. The ultimate test is whether, on the evidence adduced in the enquiry, a reasonable man would come to the conclusion that the charges leveled against a delinquent employee are held established in the departmental enquiry and it is the Court which dons the robes of the "reasonable man".

While the first Article of charge has been held, by the enquiry officer himself, as not to have been established, Sri M.P. Chandramouli, learned Counsel for the petitioner, would place emphasis on the fact that both Articles 1 and 2 are based on the very same set of facts and, having held that Article No.1 was not established, the findings of the enquiry officer, that Article No.2 was established, is perverse.

As noted above, the first charge against the petitioner was that he had approved excess payment of 308 cu.mtrs amounting to Rs. 44,352/- to the sub-contractor M/s. Jaisu Shipping Co. Pvt. Ltd against their bill dated 08.06.1992 for execution of the work under the seventh Cargo Berth at Kandla Port and that he had failed to take suitable action to recover the corporation's money promptly. The imputations of misconduct with respect to Article No.1 is that, while the sub-contractor had raised the bill dated 08.06.1992 and was paid for the total progressive quantity of Rs.24,572.37 cu.mtrs., the Kandla Port Trust had paid, the Dredging Corporation of India Limited, for a progressive quantity of Rs.24,263.92 cu.mtrs, and that excess payment was made to the contractor at Rs.144/- per cu.mtrs and, while payment was made on

15.06.1992, the petitioner had failed to seek refund from the contractor promptly or to deduct the excess amount from the security deposit of the contractor. The enquiry officer relied on the statement of Sri K. Kumar, Assistant Manager (Survey) (S-5) despite the petitioner's objection that, since he was not afforded an opportunity to examine Sri K. Kumar, the said statement should not be taken into account. The Enquiry Officer held that since the petitioner had himself relied upon the statement of Sri K. Kumar (Ex.S-5) in his defence brief, there was no reason why the statement should not be relied upon for its evidentiary value. While noting that, in the said statement (Ex.S-5) in the remarks column it was shown that a quantity of 308.45 cu.mtrs was shown to have been paid in excess to the contractor, the enquiry officer held that nowhere in the two statements of the Assistant Manager (Survey) was it recorded by him that the reduction in quantity, by the Kandla Port Trust, was due to an arithmetical mistake. While noting that excess payment of 308 cu.mtrs was made, the enquiry officer expressed his disinclination to agree with the management's stand that undue favour was shown to the contractor by allowing excess payment since, at the time of approving the payment against the relevant bill of the contractor, the petitioner was not aware that it would result in excess payment and it was only when Kandla Port Trust reduced the quantity from the bill of the Dredging Corporation of India Limited that excess payment arose. The enquiry officer held that since payment was made against a running account bill, and the contract was still in progress, the excess quantity was finally adjusted from the bills of

the contractor and as such it could not be construed that the petitioner had shown undue favour to him. The enquiry officer held the first charge as not to have been established.

The second charge is of inflation of the actual quantity dredged by the sub-contractor and the petitioner is alleged to have shown him undue favour by approving payment. It is necessary to note that the second Article of charge is that the petitioner had approved payment of Rs.20,28,422.90ps against the bill dated 08.06.1992 of the sub-contractor. It is the very same bill dated 08.06.1992 which is also the subject matter of the first charge. The enquiry officer noted that as per their letter dated 17.04.1991, which formed part of the Tendered Document (Ex.S-1), the sub-contractor was required to deploy certain equipment for executing the work, but Ex.S-6 and S-7 showed that such equipments were not deployed. The enquiry officer, while noting that the sub-contractor did not deploy the required equipment, necessary for executing the work, held that from Ex.S-9 it was seen that the sub-contractor had categorically stated that the work was carried out mechanically and that, at no stage, was labour employed by them. The enquiry officer negated the petitioner's contention in Ex.S-31 that the contractor had engaged extra men to dredge more quantity within a shorter time. The enquiry officer noted the petitioner's contention that, as per the statement of Sri K. Kumar, the contractor had increased the working hours during the relevant period which resulted in his achieving relatively higher output. The enquiry officer held that, in the statement of Sri K. Kumar (S-5), no such remark was to be found.

Before proceeding further, it is necessary to note that the statement of Sri K. Kumar, Assistant Manager (Survey), on which the petitioner placed reliance, is a statement dated 21.10.1992 wherein Sri K. Kumar had given his answers to several questions asked of him. To question No.3, as to whether any surveyor was associated in the survey, Sri K. Kumar is said to have stated that, after completion of each and every survey, the Assistant Manager (Survey) of the Project alone cannot make calculations without the surveyor and that the quantities were calculated by the surveyors and checked by him before the bills were raised against Kandla Port Trust. In the said statement Sri K. Kumar, also stated that, on the bills being scrutinized by Kandla Port Trust, due to arithmetical mistake, the quantity was reduced to 24,263.92 cu.mtrs and the same quantity was released for payment by Kandla Port Trust.

Sri D.V. Sitaramamurthy, learned Standing Counsel for the respondent Corporation, would submit that this statement, of Sri K. Kumar, Assistant Manager (Survey) dated 21.10.1992, is not the statement marked as Ex.S-5 in the enquiry proceedings and, as this statement dated 21.10.1992 did not form part of the evidence on record, reliance placed thereupon by the petitioner was misplaced and the statement was required to be ignored. The statement, in Ex.S-5, is a tabular statement signed by Sri K. Kumar, Assistant Manager (Survey) and, in the remarks column, a reference is made to the excess quantity of 308 cu.mtrs which forms part of the first charge. On the other hand the statement of Sri K. Kumar dated 21.10.1992 is not marked as an exhibit in the

enquiry. While the petitioner seems to have placed reliance on this statement dated 21.10.1992 in his defence brief the enquiry officer, on the other hand, placed reliance on the tabular statement prepared by Sri K. Kumar in Ex.S-5. The finding of the enquiry officer that the petitioner's contention, that as per the statement of Sri K. Kumar, the contractor had increased the working hours in the relevant period, was erroneous and that no such averment was found in the statement is, obviously, based on the statement in Ex.S-5, for the statement of Sri K. Kumar dated 21.10.1992 does contain such an averment in answer to question No. 4, that the sub-contractor had increased the working hours in both the tides for the period from April to June which clearly showed that the sub-contractor had achieved the required progress within the duration of the period by the above instructions from time to time. Accepting the findings of the enquiry officer, and ignoring the statement of Sri K. Kumar dated 21.10.1992, would necessitate the conclusion that the petitioner, not having placed reliance on the tabular statement of Sri K. Kumar in Ex.S-5, was justified in his objection that no reliance could be placed by the Enquiry Officer on the said tabular statement in Ex.S-5, in the absence of his being given an opportunity to cross-examine Sri K. Kumar, who was not even produced as a witness in the departmental enquiry. In the absence of Sri K. Kumar being made available for cross-examination by the petitioner the contents of Ex.S-5 must, necessarily, be ignored.

The enquiry officer makes a comparative assessment, of the quantity dredged for the prior period with the quantity dredged

during the period from 05.04.1992 to 03.06.1992 and holds that, since neither any labour was employed by the contractor nor the required equipment deployed, there was a high degree of preponderance of probability to believe that the contractors could not have dredged the quantity of 14,086 cu.mtrs during the said period which was higher than the quantities achieved by the contractor during any other survey period in the entire contract period as seen from Ex.S-5. If the tabular statement in Ex.S-5 is eschewed on the ground that the petitioner was not permitted to cross-examine Sri K. Kumar, there is no other evidence on record of a comparative assessment of the quantity dredged during different periods. It is for the same quantity dredged, during the period 05.04.1992 to 03.06.1992, was payment made to the contractor towards his bill dated 08.06.1992, which was the subject matter of charge No.1. The enquiry officer expressed his disinclination to agree with the management's stand that the petitioner had shown undue favour to the contractor by allowing excess payment. Having held in respect of charge No.1 that, for the very same quantity dredged, the petitioner had not shown any undue favour to the sub-contractor, the enquiry officer has clearly acted on surmises and conjectures in holding that the contractor has not dredged the quantity, claimed to have dredged by them, during the period 05.04.1992 to 03.06.1992.

Sri M.P. Chandramouli, learned Counsel for the petitioner, would submit that, since the burden to establish the charge is on the management, and in the absence of any evidence on record to show what was the actual quantity which the management claims

the sub-contractor had dredged and why payment was made for this dredged quantity if according to them the said quantity had not been dredged at all, the findings of the enquiry officer on charge No.2 was liable to be quashed on the ground of no evidence.

I find substantial force in this submission of the learned Counsel. The enquiry officer held that there was a high degree of preponderance of probabilities to believe that the contractor could not have achieved the claimed dredged quantity during the above period. While it is true that the degree of proof in departmental enquiries is preponderance of probabilities and, unlike in criminal cases, is not proof beyond reasonable doubt it cannot, however, be lost sight of that an employee cannot be held guilty on mere suspicion and that mere suspicion should not be allowed to take the place of proof even in domestic enquiries. It may be that the technical rules which govern criminal trials in courts may not necessarily apply to disciplinary proceedings but, nevertheless, the principle that in punishing the guilty scrupulous care must be taken to see that the innocent are not punished applies as much to regular criminal trials as to disciplinary enquires held under the statutory rules. (**H.C. Goel⁴**).

In the absence of any other evidence on record to establish that some other quantity was dredged by the sub-contractor, and in the absence of any reasons being furnished by the respondents for making payment for the alleged inflated quantity and, as it is not in dispute that the actual dredged quantity is measured on a joint survey by representatives of the sub-contractor, the Kandla Port Trust and the Dredging Corporation of

India Limited, and it is only on the basis of the statement furnished by them is payment made, it must necessarily be held that the findings of the enquiry officer, that charge No.2 is established, are perverse and are based on no evidence. It is only on the initial burden being discharged by the management does the burden shift on the delinquent employee. Since the initial burden to establish a charge lies on the management, and not on the delinquent, the conclusion of the enquiry officer that the petitioner had failed to produce any evidence to prove to the contrary would not necessitate his being held guilty of charge No.2 as the initial burden of establishing the charge has not been discharged by the employer. The finding of the Enquiry Officer, that charge No.2 is established, is a perverse finding, is based on no evidence and, therefore, charge No.2 must be held not to have been established.

The third charge is that the petitioner had approved and released the bills of the sub-contractor without deducting the quantity of pillars/muffs/tie-beams in the measured quantity. The enquiry officer noted that, while the scope of the work in the tender document clearly stipulated that the volume of piles and tie-beams should be deducted from the measured quantity to arrive at the total quantity, no deductions had been made by the petitioner, towards the volume of pillars/muffs/tie-beams underneath the berth while releasing payment of each of the bills of the contractor. The enquiry officer held that, from the documentary evidence, it was clear that the pillars/muffs/tie-beams should have been deducted from the measured quantity against each running bill of the contractor, that as per Ex.S-1 the petitioner was

designated as the Engineer-in-Charge for the subject work and that he could not justify his action in approving payment to the contractor without making the deductions as per the contract on the surmise that probably the Kandla Port Trust and Dredging Corporation of India Limited must have agreed to make deductions only after substantial progress. The enquiry officer held Charge NO.3 as proved.

It is not in dispute that the volume of pillars/muffs/tie-beams were not deducted in the first four running monthly bills of the contractor and only after it was pointed out by the Kandla Port Trust was this volume deducted from the 5th bill onwards. While Sri M.P. Chandramouli, learned Counsel for the petitioner, would contend that, since the quantity of pillars/muffs/tie-beams are a minuscule quantity, and the amounts could always be recovered even subsequently, the fact remains that the contract required this volume to be deducted from the measured quantity to arrive at the payable quantity. Deduction of this volume was a pre-requisite for arriving at the payable quantity based upon which alone could payment have been made and, since payment was made on the basis of the monthly bills submitted by the contractor, this volume of pillars/muffs/tie-beams should have been deducted, from the measured quantity, each month before the amount was paid to the sub-contractor. To the extent that the petitioner has been held to have been negligent in discharging his duties, and in not deducting the volume of pillars/muffs/tie-beams from the four running bills submitted by the sub-contractor, charge No.3 has been rightly held, by the enquiry officer, to have been established.

Sri M.P. Chandramouli, learned Counsel for the petitioner, would submit that the quantity of pillars/ muffs/tie-beams which were not deducted in the first four running bills was, in fact, later recovered in full from the payment due to the contractor from the 5th running bill itself on the matter being pointed out by the Kandla Port Trust. While this may be true the charge levelled against the petitioner is that he had failed to deduct this volume from the measured quantity in arriving at the payable quantity and, since the total payable quantity was for each month's running bill, the contract required the petitioner to have deducted this volume from the monthly bills. The fact that the said quantity was later recovered cannot result in the petitioner being completely absolved of charge No.3. In any event the petitioner has only been charged of having not deducted this volume from the measured quantity and, in so far as the first four running bills are concerned, this charge must be held to have been established. Since the entire amount representing the quantity of pillars, muffs, tie-beams of the first four money running bills, was recovered in the fifth running bill itself, the petitioner cannot be said to have shown undue favour to the contractor or to have acted in a manner prejudicial to the interest of the corporation. Charge No.3 to the extent the petitioner has been held to have displayed lack of devotion to duty and to have been negligent in the performance of his duties is, however, established by the evidence on record.

Charge No.4 is that the petitioner had kept the DCI work boat idle, even when the vessel was in a working condition, instead of putting the same to gainful use as a routine boat for

dredging on a regular basis and that he had also failed to procure/cause to be procured the sea water pump required for the work boat promptly due to which the work boat was non-operational from 22.6.1992 to 30.7.1992. Reliance was placed on behalf of the management on the statement of Sri T.G. Mariappan, Senior Technician (Engine) that the work boat was kept idle on several days though the vessel was in a working condition and that, while the vessel was non-operational from 22.6.1992 needing replacement of the sea-water pump, the petitioner had deputed Sri V. Satyaseelan, Technical Officer to Bombay for one day to procure the pump and that the latter had returned to Kandla without procuring it resulting in the work boat being kept idle for 39 days for want of the sea-water pump costing merely Rs.2400/-. The enquiry officer noted the petitioner's contention that the object of deputing Sri Satyaseelan to Bombay was for procurement of the sea water pump and not a mere tour of Bombay and that, since the officer had returned to Kandla without procuring the pump, action should have been taken against him instead of making the petitioner responsible for the delay in procurement of the pump. The petitioner further contended that one day stay at Bombay, as indicated in the movement order issued to Sri Satyaseelan, was only for the purpose of drawing T.A/DA.

The enquiry officer held that it was difficult to expect that procurement of any material could be completed within one day that too when the prescribed tender procedure etc., were to be complied with and, since the petitioner had mentioned in the movement order that the stay at Bombay was for one day, it was

difficult to expect Sri Satyaseelan to report back after procuring the pump. The enquiry officer further held that the petitioner had produced no documentary or oral evidence to show that he had taken action against Sri Satyaseelan for his lapse in returning to Kandla without procuring the pump nor had he informed the matter to the head office for taking necessary action. The enquiry officer held that from Ex.S.32 it was clear that, while the boat was in a working condition for 92 days, it was kept idle for 40 days.

On a query from the court as to whether tenders were required to be invited, for procurement of the sea-water pump costing Rs.2400/-, Sri D.V. Seetharama Murthy, learned Standing Counsel for the respondent–Corporation, would fairly concede that no tenders were required to be invited in this regard. Learned counsel would contend that one day's time was insufficient to procure a sea-water pump in a huge metropolis like Bombay and that the petitioner had, in any event, failed to take disciplinary action against Sri V. Satyaseelan for his failure to procure the sea-water pump.

It does not stand to reason that one day stay at Bombay is insufficient to procure a sea water pump costing Rs.2400/-more so when it is conceded across the bar that no tender is required to be called for procurement of such material. The finding of the enquiry officer, that the prescribed tender procedures were required to be complied, is clearly a perverse finding.

The petitioner has not been charged of having failed to take disciplinary action against Sri V. Satyaseelan for his lapse in returning to Kandla without procuring the pump. Sri M.P.

Chandramouli, learned counsel for the petitioner, would contend that since the petitioner was not charged of having failed to take disciplinary action against Sri V. Satyaseelan, and it is only for the first time in the enquiry report that the petitioner had been held guilty of having failed to take disciplinary action against the said officer, the petitioner in his representation, submitted in reply to the findings of the enquiry officer, had enclosed a copy of the show cause notice issued by him to Sri V. Satyaseelan calling upon him to show cause as to why disciplinary action should not be taken against him for not procuring the pump. Learned counsel would submit that since the petitioner had issued a notice calling for V. Satyaseelan's explanation, and since Sri V. Satyaseelan's inability to procure the pump had resulted in the work boat being kept idle for 40 days, action could only have been against Sri V. Satyaseelan for his failure to procure the sea water pump and not against the petitioner.

I find considerable force in this submission of Sri M.P. Chandramouli. A perusal of the petitioner's reply to the findings of the enquiry officer, as submitted by him to the disciplinary authority, would show that the petitioner had categorically stated that the petitioner had called for the explanation of Sri V. Satyaseelan, vide proceedings dated 16.7.1992, and that he had enclosed the reply given by Sri V. Satyaseelan and further clarifications obtained along with the representation. Except to state that the documents submitted along with the representation could not be taken note of, the disciplinary authority has not dealt with this aspect at all. As noted above, the petitioner has not be

charged of having failed to take disciplinary action against Sri V. Satyaseelan for his inability to procure the sea water pump costing Rs.2400/- within the period of his one day's stay at Bombay. The petitioner cannot be held guilty of a charge which has not even been levelled against him. It is for the first time in the enquiry report that the enquiry officer has held that the petitioner's failure to take disciplinary action against Sri V. Satyaseelan was also a factor which would establish the charge against him. At the first available opportunity, in his reply to the findings of the enquiry officer, the petitioner had drawn the attention of the disciplinary authority to the fact that he had taken disciplinary action against Sri V. Satyaseelan. The disciplinary authority, without application of mind, has refused to take note of the documents submitted by the petitioner with regards the action taken by him against Sri V. Satyaseelan solely on the ground that they were not marked as exhibits in the departmental enquiry, though the fact remains that they were not marked as it did not form part of the charge. Viewed from any angle, charge No.4 must also be held not to have been established.

Charge No.5 is that the petitioner had approved payment of Rs.1,66,400/- to M/s Pritam Brothers, Boat Contractors, towards boat hire charges for 26 days during the period from 13.3.1992 to 12.4.1992 at the rate of Rs.6400/- per day whereas, according to the work done certificate dated 13/14.4.1992 issued by the Master of Dredger-VI, the boat services were provided only for 25 days including 6 maintenance days during the said period and thereby he allowed excess payment of Rs.6400/- to the contractor and had

caused financial loss of Rs.6400/- to the Corporation. The enquiry officer held that from the work done certificate it was seen that the Master of Dredger-VI had certified the use of the boat as a routine boat for a period of 25 days with six maintenance days, that while processing the Bill dated 15.4.1992 of the contractor, only five maintenance days were shown during the period by omitting 7.4.1992 from the maintenance days and this work done certificate issued by Master of Dr-6, was disregarded and payment was approved for 26 days. The enquiry officer further held that the Assistant Manager had nowhere certified that the boat was utilized by him for survey purpose on 7.4.1992 as contended by the petitioner. On the ground that payment was made for 26 days, though the boat was used for 25 days, and that excess payment of Rs.6400/- was made to the contractor, the enquiry officer held Charge No.5 to be established.

Sri M.P. Chandramouli, learned counsel for the petitioner, would submit that the Assistant Manager had certified that the boat was utilized on 7.4.1992 and that a copy of the said certificate was readily available with him for perusal by this Court. Learned Counsel would further contend that 7.4.1992 is circled in the statement which would itself show that on that day the boat was used and that it was not a maintenance day. I am afraid I cannot agree. The certificate on which Sri M.P. Chandra Mouli, learned counsel for the petitioner, would place reliance on is not marked as an exhibit in the departmental enquiry. The mere fact that 7.4.1992 is circled does not necessitate a conclusion that it was utilized on that day and that it was not a maintenance day. In any

event, in proceedings under Article 226 of the Constitution of India, this Court would not sit in appeal over findings of fact recorded by domestic tribunals and, since there is adequate evidence on record to show that payment was made for 26 days, as against the certificate issued by the Master-Dr.6 that it was used only for 25 days, charge No.5 has been rightly held to have been established.

Charge No.6 relates to dispatch of certain materials of DR-6 to the Project Office, Bombay in violation of the prescribed procedure whereby the consignment costing Rs.1.00 lakh was lost. The petitioner is alleged to have failed to take follow up action, for restoration of the property of the Corporation, for about 10 months after the loss of property. The enquiry officer placed reliance on the management circular dated 1.2.1984 to hold that the commercial value of the items despatched was not taken, that no intimation was sent to the Dy. Manager (Insurance) at Head Office regarding despatch of the consignment for arranging transit insurance as stipulated in the said circular and that, while the value of the items despatched in the consignment was about Rs.1.00 lakh, the maximum liability of the courier service, as per the shipping bill, was only Rs.100/- and that the petitioner did not insist upon the courier agency accepting liability for the actual value of the items despatched. The petitioner is also alleged to have failed to lodge a police complaint, and not to have preferred a claim on the courier for restoration of the property, immediately after receiving the telex dated 14.1.1992 from the Dy. General Manager (Tech.) Bombay. The enquiry officer noted that, in Ex.S.16, the Deputy General Manager (Technical), Bombay

informed the petitioner that the items sent through M/s Fasser & Delurg Courier Service was not received by any one at the Bombay project office and that the seal affixed on the shipping bill of the courier service was also not that of the Project Office. In Ex.S.18, the Dy. General Manager (Technical) sought certain information from the petitioner regarding missing of the above consignment and, it is only under Ex.S.33, that the petitioner lodged a complaint with the Kandla Police Station in October, 1992 regarding non-receipt of the above consignment, costing about Rs.1.00 lakh, by the consignee.

The enquiry officer held that, from the documentary evidence, it was clear that the petitioner was involved at every stage from collecting the material from DR-6 to sending a telex message to DGM (Technical), Bombay about the despatch of the material but, as Head of the Project Office, he did not ensure compliance with the circular instructions of the Head Office as contained in Ex.S.17 while despatching the material through courier. The enquiry officer rejected the petitioner's contention that, since he had marked the telex to the Deputy Manager (Traffic) working under him, he was not responsible for the missing of the items. With regards the petitioner's failure to take action till October, 1992, the enquiry officer held that though he was aware of the missing of the items, at least by 15.4.1992, he did not take any action till October, 1992.

Sri M.P. Chandramouli, learned counsel for the petitioner, would contend that the responsibility, for sending the material through courier, was that of the Deputy Manager (Traffic) and,

since the petitioner had marked the telex to the Deputy Manager, he cannot be held responsible for missing of the material. Learned counsel would contend that the petitioner, being the project in charge, cannot be expected to personally go and deliver the material to the courier agency and that, since he had marked the telex to the Dy. Manager (Traffic), it was the latter who was required to take necessary steps to comply with the management circular issued by the head office while sending the material through courier. Learned counsel would contend that, since the shipping bill showed that the material was received at Bombay, it would necessarily follow therefrom that the consignment had been sent by the courier agency to Bombay and, for the lapse on the part of the Bombay office in taking delivery of the property, the petitioner could not be blamed. Learned counsel would contend that no action whatsoever was taken against the Deputy Manager (Traffic), who had sent the material through the courier service and the petitioner was made a scape goat for no fault of his.

Sri D.V. Seetharama Murthy, learned Standing Counsel, would contend that the petitioner, being the project in charge, was responsible for ensuring that the materials management circular issued by the head office was adhered to and failure to take necessary steps to comply with the management circular, by declaring the cost of the consignment to the head office to take necessary transit insurance, had resulted in loss of property worth Rs.1.00 lakh as against which the courier agency had admitted liability only for Rs.100/-. Learned Standing Counsel would contend that, even after being informed that the material was

missing and that necessary action should be taken to recover the property, the petitioner had kept quiet and had not even lodged a police complaint from 15.4.1992 till October 1992. Learned Standing Counsel would further contend that the Deputy Manager (Traffic) was, in fact, charged of misconduct and was imposed the punishment of stoppage of two increments for two years with cumulative effect for having failed to comply with the Management circular instructions before dispatching the material through courier.

While the submission of Sri M.P. Chandramouli that the petitioner, as the project in charge, cannot personally handle each and every issue may not be without merit, the fact remains that he, being the project in charge, is ultimately responsible for any lapse on the part of his subordinates. Even if it is assumed that he was not directly responsible for the failure in not adhering to the material management circular, while despatching the material through courier, and that it was only Dy. Manager (Traffic) who was responsible, the fact remains that the petitioner has also been found guilty of the charge of not having taken immediate steps for recovery of the property. From the evidence on record it is clear that, while the petitioner was aware of the missing of the material as early as in April, 1992, he had not lodged any complaint with the police till October, 1992. The conclusion of the enquiry officer that Charge No.6 levelled against the petitioner is proved cannot be said to be based on no evidence nor can the findings in this regard be said to be perverse necessitating interference under Article 226 of the Constitution of India.

The Seventh charge relates to the award of contract to Shri N. Rout, for supply of a diesel car, in deviation of the contractual conditions and to have shown undue favour to the contractor. The enquiry officer held that the comparative statement and the proceedings of the tender committee, in Ex.S.22, would show that out of four parties only Sri N. Rout had submitted the earnest money deposit while the other three parties did not do so and, while the rates quoted by the other three parties including Shri Rout were exclusive of fuel cost, the rate quoted by Sri Acharya was inclusive of fuel cost but with a rider that the rate would be applicable for a maximum running of 2500 km in a month as against 3600 km stipulated in the tender. The enquiry officer held that the tenders submitted by all the four parties were defective in as much as the parties had stipulated counter conditions and, therefore, all the four tenders should have been rejected. The enquiry officer held that, even if there was urgency for engaging a car due to exigencies of work, the petitioner should have asked the parties to submit fresh tenders without any counter conditions and instead the petitioner had recommended Sri N. Rout as the lowest tenderer and had awarded the contract with rates exclusive of fuel cost which was not in accordance with Clause No.2 of the special conditions and specifications at Page 4 of the Tender Document. The enquiry officer further held that the rate quoted by Sri N. Rout was not the lowest, that it was more than the rate quoted by Sri Acharya and that the petitioner had failed to produce any documentary or oral evidence to prove that the award of the contract to Sri N. Rout was concurred by the competent authority

at the Head Office.

Sri M.P. Chandramouli, learned counsel for the petitioner, would submit that, since the enquiry officer had himself noted that, except Sri N. Rout, the other three parties did not even submit their earnest money deposit, the question of accepting the rate of Sri Acharya did not arise. Learned Counsel would also draw attention of this Court to the enquiry report wherein the enquiry officer noted that Exs.D.1 to D.4 were marked as exhibits, to contend that Ex.D.1 and D.2 were the documents relating to this charge and, since these documents were not taken into consideration by the enquiry officer, this charge must be held not to have been established.

Sri D.V. Seetharama Murthy, Learned Standing Counsel, on the other hand, while conceding that Ex.D-1 and D.2 related to charge No.7, would submit that neither Exs.D.1 and D.2 relate to concurrence by the competent authority at the head office and as such reliance placed by the petitioner, on these two documents, in support of his contention that his recommendations were accepted by the head office was incorrect.

It is necessary to reiterate that it is not for this Court, in proceedings under Article 226 of the Constitution of India, to examine the scope of a document marked as an exhibit in a departmental enquiry, as these are matters for the enquiry officer/disciplinary authority to consider. The fact that Ex.D.1 and D.2 relate to charge No.7 is not in dispute. It is also not in dispute that neither of these two documents have been considered by either the enquiry officer or by the disciplinary authority. Whether

these documents are relevant to the charge or not is not for this Court to consider as appreciation of evidence is, ordinarily, not for this Court to undertake in proceedings under Article 226 of the Constitution of India. Suffice to hold that, since documents relevant to this charge have not been considered either by the enquiry officer or by the disciplinary authority, this charge must also be held as not established.

Charge No.8 is that the petitioner, while under suspension, had unauthorizedly left Paradip and visited Cuttack and Bhubaneswar on 7.7.1993 and 9.7.1993 respectively and that he had unauthorizedly used the vehicle engaged by the project office, Paradip for his travel from Paradip to Cuttack and back on 7.7.1993 at Corporation's expense though in the suspension order it was ordered that he should not leave his head quarters i.e., Paradip without prior permission of the C.M.D. and that he should not visit the project office or any other offices of the Corporation during the suspension period.

The enquiry officer rejected the petitioner's contention that he had used the vehicle only in connection with office work to attend sales tax cases. On examining Exs.D.3 and D.4 (notices issued by the Addl. Commissioner of Sales Tax, Cuttack Range), the enquiry officer noted that the meetings in the Sales Tax cases were fixed on 25.6.1993 and 2.8.1993, and not on 7.7.1993 as contended by the petitioner, and that, while the petitioner had utilized the Corporation's vehicle for his to and for journey to Cuttack on 7.7.1993, he did not produce any documentary or oral evidence to show that his visit to Cuttack on 7.7.1993 was in

connection with Corporation's work. The charge levelled against the petitioner is also of his having left head quarters and to have gone to Bhubaneswar on 9.7.1993. The enquiry officer noted the statement of S.W.2 that he met the petitioner in a hotel at Bhubaneswar on 9.7.1993.

Sri M.P. Chandramouli, learned counsel for the petitioner, while fairly conceding that the petitioner had received the order of suspension on 5.7.1993, would nonetheless contend that, since the petitioner had handed over charge only on 8.7.1993, his traveling to Cuttack on 7.7.1993 could not be faulted. It is necessary to note that the suspension order came into effect immediately and the petitioner was specifically asked not to leave head quarters without prior permission of the Chairman and Managing Director. His travel to Cuttack on 7.7.1993 in a taxi engaged by the Corporation, and to have visited Bhubaneswar on 9.7.1993, is contrary to the specific conditions stipulated in the order of suspension. Charge No.8 must, therefore, also be held to have established.

As a result only charge Nos. 3, 5, 6 and 8 must be held to have been established and charge Nos.1, 2, 4 and 7 as not proved. Now on the question regarding the punishment to be imposed for the charges held established.

It is no doubt true that, if the order may be supported on any finding as to substantial misdemeanor for which the punishment can lawfully be imposed, it is not for the Court to consider whether that ground alone would have weighed with the authority in imposing the punishment. The Court has no jurisdiction, if the

findings of the enquiry officer or the Tribunal prima facie make out a case of misdemeanor, to direct the authority to reconsider that order because in respect of some of the findings, but not all, it appears that there had been violation of the rules of natural justice.

(State Of Orissa Vs. Bidyabhushan Mohapatra^[11]; Railway Board Vs. Niranjan Singh^[12]; State Of UP Vs. Nandakishore Shukla^[13]; Y. Rajeswari Vs. District Judge, Nellore^[14]).

The quantum of punishment in disciplinary matters is primarily for the disciplinary authority to consider and the jurisdiction of the High Court, under Article 226 of the Constitution, in this regard is limited. Where administrative action is challenged under Article 14 as being discriminatory, that equals are treated unequally or unequals are treated equally, the question is for Constitutional Courts, as the primary reviewing courts, to consider the correctness of the level of discrimination applied, whether it is excessive and whether it has a nexus with the object intended to be achieved. Here the Court deals with the merits of the balancing action of the administrator and is, in essence, applying “proportionality” as a primary reviewing authority. But where punishment in disciplinary cases are challenged as “arbitrary” under Article 14 the question is whether the order is “rational” or “reasonable” and the test then is the *Wednesbury* test. Courts would then be confined only to a secondary role and will only have to see whether the administrator has done well in his primary role, whether he has acted illegally or has omitted relevant factors from consideration or has taken irrelevant factors into consideration or

whether his view is one which no reasonable person could have taken. If his action does not satisfy these requirements it should be treated as arbitrary. Thus, when administrative action is attacked as discriminatory under Article 14, Courts exercise the power of primary review applying the doctrine of proportionality. Where, however, a decision, relating to punishment in disciplinary cases, is questioned as “arbitrary” under Article 14, the court is confined to *Wednesbury* principles as a secondary reviewing authority and will not apply “proportionality” as a primary reviewing court as no issue of discrimination under Article 14 arises in such a context. The court while reviewing punishment, and if it is satisfied that *Wednesbury* principles are violated, has normally to remit the matter to the administrator for a fresh decision as to the quantum of punishment. Only in rare cases, where there has been long delay in the time taken by the disciplinary proceedings and in the time taken in Courts, can the Court substitute its own view as to the quantum of punishment. (**Om Kumar Vs. Union of India**^[15]). The High Court cannot, while exercising powers under Article 226, interfere with the punishment because it considers the punishment to be disproportionate. It is only in extreme cases, which on their face show perversity or irrationality that there can be judicial review. Merely on compassionate grounds Courts should not interfere. (**Union of India Vs. R.K. Sharma**^[16]). Interference with the quantum of punishment cannot be a routine matter. Interference would be justified only if the High Court finds that the decision is one which no sensible person who weighed the pros and cons could have arrived at or where it records a finding,

based on material, that the punishment is in '*outrageous*' defiance of logic. (**Canara Bank Vs. Awasthy**^[17]).

Unless the punishment or penalty imposed by the disciplinary or the departmental appellate authority is either impermissible or is such that it shocks its conscience the High Court should not normally substitute its own opinion and impose some other punishment or penalty. Judicial review, not being an appeal from a decision, but a review of the manner in which the decision was arrived at, the Court, while exercising the power of judicial review, must remain conscious of the fact that it cannot substitute its judgment for that of the administrative authority on a matter which fell squarely within the sphere of jurisdiction of that authority. (**Apparel Export Promotion Council Vs. A.K. Chopra**^[18]).

Courts, while dealing with the quantum of punishment, must record reasons as to why it is felt that the punishment was not commensurate with the proved charges. The scope for interference is very limited and restricted to exceptional cases. The High Court should give reasons why the punishment was considered disproportionate. Failure to give reasons amounts to denial of justice. A mere statement that it is disproportionate would not suffice. (**Regional Manager, U.P. SRTC Vs. Hoti Lal**^[19], **Damoh Panna Sagar Rural Regional Bank Vs. Munna Lal Jain**^[20], **Maharashtra State Seeds Corporation Ltd Vs. Hariprasad Drupadrao Jadhao**^[21], and **UPSRTC Vs. Suresh**

Pal^[22]).

Now the judgments relied upon. In **Lalit Popli**¹⁰, the Supreme Court held that the High Court, while exercising jurisdiction under Article 226 of the Constitution, does not act as an appellate authority, that its jurisdiction is circumscribed by limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice and that judicial review is not akin to adjudication of the case on merits as an appellate authority.

In **K.S.S.N. Sarma**⁹, this Court held that, while reviewing disciplinary proceedings, Courts should not go into the question of adequacy or inadequacy or sufficiency or insufficiency of the evidence on the basis of which the charges are held to have been proved and, if they find that the findings are grounded on some substantial acceptable evidence, the findings cannot be upset and the High Court, in exercise of their powers under Article 226 of the Constitution, cannot re-appreciate the evidence and record a finding on a question of fact different from the one recorded by the disciplinary authority even in a case where two views are possible from the same evidence. This Court further held that if the penalty can lawfully be imposed, and was imposed on the basis of proved misconduct, this Court had no power to substitute its own discretion for that of the employer and that the adequacy of penalty, unless it is *mala fide* or shockingly disproportionate to the gravity of misconduct committed by the delinquent, was certainly not a matter for the Court to concern itself with. This Court further

observed that in a rare case, where the penalty imposed by the disciplinary authority shocks the conscience of the Court having regard to the nature of proved misconduct, it may interfere but not otherwise.

In **P.S.V. Malliya**⁸, while examining the quantum of penalty the Gujarat High Court looking at the petitioner's past record, held that the punishment imposed was too harsh and, under the peculiar facts of that case and having regard to the fact that the delinquent-employee had retired from service, observed that some indulgence was required to be shown and directed his reinstatement with continuity of service but without back wages and that the employee was entitled for retirement benefits and other monetary benefits. The judgment of the Gujarat High Court in **P.S.V. Malliya**⁸, rendered in the peculiar facts and circumstances of that case, cannot be held applicable to each and every case of punishment imposed for proved misconduct.

In addition to the contention that imposition of punishment of removal from service, only for the charges 3,5,6 and 8, is arbitrary, Sri M.P. Chandramouli, learned counsel for the petitioner, would also submit that since the Deputy Manager (Traffic) was imposed the punishment of stoppage of two increments with cumulative effect for a period of two years, (for a charge similar to charge No. 6 levelled against the petitioner), the punishment of removal from service imposed on the petitioner was discriminatory.

As noted above only charges 3, 5, 6 and 8 are established.

Charge Nos. 3, 5 and 6 have been held established to the extent that the petitioner had displayed lack of devotion to duty and was negligent in the discharge of his duties. Charge No.8 relates to commission of an act subversive of discipline and good behaviour. Since the charge of failure to maintain absolute integrity, and showing undue favour to the contractor, in charge Nos. 2 and 7, are held as not established the petitioner cannot be said to have indulged in acts of corruption for which the punishment of removal from service would be justified, since no employee, who has indulged in such acts, and had failed to maintain absolute integrity, can be permitted to be continued in service. It must be borne in mind that the disciplinary authority had imposed the punishment of removal from service on the petitioner concurring with the findings of the enquiry officer that the charge of failure to maintain absolute integrity and showing undue favour to the contractor, in charges 2 and 7, were also proved. Whether the petitioner would have been imposed the punishment of removal from service, on charge Nos. 2 and 7 being held not to have been established, is not for this Court to speculate. It is also necessary to note that there is no evidence on record to show that the petitioner was imposed any punishment pursuant to any departmental action having been taken against him earlier. The petitioner's averment that he had rendered 18 years of unblemished, loyal and sincere service has not been specifically denied by the respondents. The petitioner reached the age of superannuation during the pendency of this writ petition and, consequently, imposition of a lesser punishment would only entitle

him for monetary benefit and not for reinstatement in service.

While it is no doubt true that imposition of punishment is normally in the employer's realm, it cannot also be lost sight of that the punishment of removal from service was imposed on the petitioner on the basis of charges 2 to 8 having been held established. Considering the fact that the charges 2, 4 and 7 are held not established, and in the light of the fact that for a charge similar to charge No.6 the Deputy Manager (Traffic), who was primarily responsible for failing to adhere to the head office circular in dispatching the consignment, has been imposed the punishment of stoppage of two increments with cumulative effect for two years, ends of justice would be met if the order of the first respondent-appellate authority confirming the punishment of removal from service, imposed by the 2nd respondent-disciplinary authority on the petitioner, is set aside and the first respondent is directed to re-consider the punishment imposed on the petitioner, in the light of the proved misconduct in charges 3,5,6 and 8 and on taking note of the fact that, with respect to a charge similar to Charge No.6, the Deputy Manager (Traffic) has been imposed the punishment of stoppage of two increments with cumulative effect for two years. The first respondent i.e., the Board of Directors of the respondent-Corporation shall take an appropriate decision in this regard at the earliest and, in any event, not later than four months from the date of receipt of a copy of this order. It is made clear that this Court has only set aside the order of the first respondent-appellate authority and that the order of the 2nd respondent-disciplinary authority shall continue to remain in force

subject to the orders now required to be passed by the first respondent-appellate authority.

The writ petition is disposed of accordingly. However, in the circumstances, without costs.

Date: .06.2007

RAMESH RANGANATHAN, J

Note: L.R. copy to be marked.

B/o
MRKR/ASP

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- [\[1\]](#) 1964 (5) SCR 64
 - [\[2\]](#) (2004) 3 SCC 682
 - [\[3\]](#) (2006)5 SCC 173
 - [\[4\]](#) (1964) 4 SCR 718
 - [\[5\]](#) (1963 (1) LLJ 684
 - [\[6\]](#) (1963) 3 SCR 767
 - [\[7\]](#) (1965) 1 WLR 1320 at 1326
 - [\[8\]](#) 2006 TIGJ- 207 (Gujarat High Court)
 - [\[9\]](#) 1998(4) ALD 722
 - [\[10\]](#) 2003(3) SCC 583
 - [\[11\]](#) AIR 1963 SC 779
 - [\[12\]](#) AIR 1969 SC 966
 - [\[13\]](#) AIR 1996 SC 1561
 - [\[14\]](#) 1996(3) ALD 719 (DB)
 - [\[15\]](#) 2001(2) SCC 386
 - [\[16\]](#) 2001(9) SCC 592

- [\[17\]](#) 2005(6) SCC 321
- [\[18\]](#) 1999(1) SCC 759
- [\[19\]](#) 2003(3) SCC 605
- [\[20\]](#) (2005) 10 SCC 84
- [\[21\]](#) 2006(3) SCC 690
- [\[22\]](#) 2006(8) SCC 108